



# THE MONTH IN WASHINGTON

*A Federal Report Provided by* **LGV&A**

## OCTOBER 2011

As President Obama continued to crisscross America in an attempt to generate grassroots support for his Americans Jobs Act, Congressional leaders showed little appetite for a majority of his proposals. In the Senate, leaders have been working to find bipartisan support for pieces of the legislation. Opponent of the Affordable Care Act, sought to capitalize on the Administration's decision to abandon implementation of the CLASS Act – a provision of the law that would have provided affordable long-term public health insurance – as evidence of the flaws in the law. CalPERS and other institutional investors were pleased to see the Senate confirm the reappointment of Commissioner Luis Aguilar to the U.S. Securities & Exchange Commission.

### ISSUES AND EVENTS

#### **Treasury Secretary Delivers Accounting to Congress in First Financial Services Oversight Committee Report**

Treasury Secretary Timothy Geithner told Congress about banking reforms he believes would return stability to the banking industry and restore consumer confidence in our financial system. He also told Congress that passing a jobs bill this fall would send a strong message to voters that their elected officials are doing something to improve the economy.

During the first annual report of the Financial Services Oversight Committee to both chambers of Congress, Geithner expressed support for tougher standards of capitalization, greater transparency in banking policy, better response by mortgage lenders to the lingering foreclosure crisis, and the need for more standardized banking reforms among the largest banks around the world. He said achieving these objectives would strengthen not just the economy, but the confidence of American consumers who “still bear the scars” of the 2008 financial meltdown, a failure of the banking industry that precipitated current economic problems.

The FSOC was created as part of the Dodd-Frank reforms and has been working to develop and standardize banking regulations, as well as to provide new consumer protections.

Appearing before the House Financial Services Committee, Geithner sometimes engaged in animated debate with Committee Chairman Spencer Bachus (R-AL). Bachus challenged Geithner from the get-go.

“Secretary Geithner, with all due respect, I’m not sure that you have a clear picture of reality as it relates to not only the thousands of pages of restricting regulations that have been imposed on financial institutions,” Bachus chided Geithner, “but also the daily drumbeat of the FDIC and other agencies directing the banks not to take risks.”

Bachus portrayed some of the newly adopted regulations as demonizing the inherent right of businesses to make profits and said smaller regional banks are suffering because of the burdens. He tried to lure Geithner into commenting on Bank of America’s recent announcement to charge a \$5 monthly fee for debit cards and said he saw nothing un-transparent about it, asking if “it is evil” to make a profit? He was referring to comments critical of Bank of American by President Obama earlier in the week.

Geithner refused to take the bait, saying he would not discuss any specific bank’s policies and he denied the administration would interfere in setting bank fees. He assured Bachus the administration is not opposed to banks making profits. When pressed by Bachus to identify specific harms consumers were experiencing by banks, however, he identified the mortgage servicing industry as a primary example, saying an unacceptable number of homeowners still cannot speak to a person at their lending institution about foreclosure problems.

The Obama Administration got some support in the House when Dodd-Frank co-author, Rep. Barney Frank (D-MA) provided a spirited defense of the work of the FSOC. “Is it restrictive that we are regulating swaps and derivatives?” he asked rhetorically, “Apparently my colleagues would like to go back to the days of AIG when loan arrangers could ride rough-shod over the rules.” Frank reminded the chamber that a new requirement for financial advisers to hold fiduciary responsibility does not prevent a bank from lending. He said that regulations preventing banks from making “bad loans” to people who don’t qualify for them, then selling them as bundled derivatives does not prevent them from lending, but that those practices did create the financial crisis.

Geithner stayed on point when speaking with the Senate Banking Committee later in the day. That committee held two related hearings earlier in the week about consumer protection and the economic implications of the federal deficit. The Treasury Secretary repeated his warning that Congress must pass jobs legislation now and also stressed the importance of efforts to gain cooperation and coordination with large banks around the world. He said the tougher standards for capitalization and securities trading were needed to prevent the kind of unsustainable risk American banks took on in the last decade. That failed risk cost American taxpayers in money, confidence, and eventually jobs. He said the new regulations set a better, stronger standard for more solvent banking practices and that the U.S. is working to encourage European countries – and eventually Asian countries – to adopt similar standards. Geithner told Senators the new regulations

should not put American banks at a competitive disadvantage in the world, saying “differing standards [for banking] in different countries allows the risk to migrate to those places...” and that nobody wants to see that happen. He said he is fairly optimistic that overseas banks will adopt the same standards.

### **Aguilar, Others Confirmed to Posts with Capital Markets Regulators**

Luis A. Aguilar (D) was reconfirmed by the Senate as a Commissioner of the US Securities and Exchange Commission following months of political bickering and posturing by the Senate. Along with him, the Senate confirmed Daniel M. Gallagher Jr (R) to the SEC and Mark P. Wetjen (D) to the Commodity Futures Trading Commission (CFTC).

Aguilar’s reappointment had been long sought by the public pension community. Aguilar’s term had technically expired earlier this year, but he was able to hold-over until reappointed or replaced. Despite his near lame-duck status, Aguilar had championed a number of pro-investor initiatives. Aguilar encouraged the SEC to appeal the decision in the *BRT v SEC* case which stands to place sizeable barriers to a number of investor-friendly rules, including proxy access, the public plan community’s top governance priority. Aguilar also has been a vocal supporter of the creation of an Investor Advisory Committee.

CalPERS sent letters to the White House and Capitol Hill in March 2011. The President formally re-nominated Aguilar in May, at which time he also nominated Dan Gallagher to replace Kathleen Casey on the SEC.

“During his tenure at the SEC, Commissioner Aguilar has embodied the Commission’s mission to be ‘the investors’ advocate,’” Anne Stausboll wrote in her letter to the White House. “Commissioner Aguilar has proven himself to be an invaluable member of the SEC and we urge that he be re-nominated to the Commission as soon as possible.”

Not surprisingly, Aguilar’s reappointment had been mired in politics. But, the announcement by Republican SEC Commissioner Casey that she was stepping down paved the way for a bipartisan agreement to fill the SEC. As such, Aguilar’s nomination was delayed while Senate leaders determined who they wanted the President to nominate to fill Casey’s GOP slot at the SEC. Deference to minority party leaders is not technically required but is a long-standing tradition and serves to help move along nominations.

Gallagher is a veteran of both the SEC and private practice. He will rejoin the SEC from the law firm of WilmerHale, where he is a partner in the firm's Securities Department, and a member of the Broker-Dealer Compliance and Regulation, Securities Litigation and Enforcement and Derivatives and Futures Practice Groups.

While at the SEC, Gallagher held several positions. Most recently, he was a Deputy Director of the Division of Trading and Markets. Prior to that he was counsel to former SEC Chairman Christopher Cox. Gallagher originally joined the SEC in 2006 as counsel to former SEC Commissioner Paul Atkins.

Rounding out the package of capital markets regulators was Mark Wetjen. Wetjen is a Capitol Hill veteran, who has worked for Senate Majority Leader Harry Reid (D-NV) since 2004. Although not a commodity futures expert, Wetjen played a critical role in the development and enactment of the Dodd-Frank Consumer Protection and Wall Street Reform Act.

Little is publicly known of Wetjen, but he is said to be well liked on the Hill. During his confirmation hearing, he was introduced by Sen. Reid and received letters of support from Sen. Mary Landrieu (D-LA) and the US Chamber of Commerce, who has fought vociferously against many Dodd-Frank regulations.

### **Dozens of Lawmakers, Including Eight Californians, Call for Disclosure of Corporate Political Spending**

A sizeable group of US Representatives has called upon the SEC to issue rules requiring public companies to disclose corporate political expenditures.

More than 40 Members of Congress, including eight California Democrats, signed a letter to SEC Chairman Mary Shapiro urging the securities regulator to “use its authority to issue rules requiring full public release of corporate political spending.” The letter follows an official petition for rulemaking filed by a coalition of notable securities law professors.

There has been heightened interest in providing shareowners a vote to approve corporate political spending, or at least require companies to disclose their political expenditures, in light of the Supreme Court’s 2009 *Citizens’ United* decision. The *Citizens United* case opened the door for unrestrained political spending by corporations by overruling a law the prohibited corporations and unions from using treasury funds on independent political expenditures- that is direct spending in support or opposition of political candidates or causes. Rules relating to campaign contributions were unaffected by the decision.

“The Government may regulate corporate political speech through disclaimer and disclosure requirements,” the Court said, “but it may not suppress that speech altogether.” Opponents of the decision have seized upon the “disclaimer and disclosure” language in demanding to know how companies are spending general funds for political purposes.

“The U.S. Supreme Court’s misguided *Citizens United* decision gave corporations the unfettered ability to use shareholder money for partisan political purposes without ever disclosing to shareholders how corporate funds are being utilized,” the lawmakers wrote. “As a result, shareholders are now completely in the dark, unaware that their money could be funding political attack ads. Shareholders cannot hold corporate management accountable for decisions the shareholders never knew were made.”

The eight California Democrats to sign the letter include: Susan Davis (San Diego), Anna Eshoo (Palo Alto), Bob Filner (San Diego), John Garamendi (Walnut Creek), Barbara Lee (Oakland), Zoe Lofgren (San Jose), Pete Stark (Fremont) and Lynn Woolsey (Santa Rosa).

## **House GOP Requests Supreme Court Review of Health Care Law**

More than 100 House Republicans, along with the conservative group American Center for Law and Justice, filed an amicus brief with the Supreme Court supporting review of the Patient Protection and Affordable Care Act. The Supreme Court is scheduled to meet November 10<sup>th</sup> to discuss how they will handle challenges to the law.

There are three legal challenges pending in the PPACA repeal effort. Two of those challenges were struck down by U.S. circuit appellate courts based on technical issues with regard to the challenges. One case, however, a decision by the 11<sup>th</sup> Circuit Court of Appeals in Atlanta found the law's so-called "individual mandate" requiring all Americans to purchase insurance or pay a penalty to be unconstitutional, though that decision let the rest of the PPACA stand.

This challenge, initiated by Paul Broun (R-GA), says that if the individual mandate is illegal, the rest of the PPACA should be repealed because it would no longer operate as Congress intended. The brief states, in part, "Congress' conscious rejection of a severability clause in the ACA is strong evidence that Congress did not intend for the statute's individual provisions to be severable," the brief says. "Second, Congress could not have intended the individual mandate to be severable if severing it would allow an inoperable or counterproductive regulatory scheme to stand."

This new challenge comes just ahead of a Kaiser Family Foundation report released on Friday, in which the organization revealed the lowest level of public support for the PPACA since it was signed into law in March 2010. The Kaiser monthly poll revealed that 51 percent of respondents had an unfavorable view of the law, while just 34 percent had a favorable impression. The reason for the slide is attributable to a loss of support by Democrats who formerly supported the law by about two-thirds, but who now approve of the law by just 52 percent. Only 18 percent of respondents expect they and their families will be better off because of the law, down from 27 percent just last month.

## **HHS Secretary Sebelius Closes CLASS**

Health and Human Services Secretary Kathleen Sebelius sent a letter to Congress acknowledging that the Community Living Assistance Services and Supports (CLASS) component to the President's landmark healthcare reform bill is not financially sustainable to the extent required for implementation and will be shelved.

CLASS was championed by the late Sen. Ted Kennedy (D-MA) as a critical step forward in providing affordable long-term public health insurance. Opponents of the law who challenged CLASS insisted that its provision for letting anyone purchase long-term care insurance would not attract enough healthy people to provide the necessary pool required to offset its eventual costs. The Affordable Care Act's provisions required the HHS to provide documented evidence of its financial viability, and in recent weeks it became increasingly clear that evidence would not be forthcoming.

Sebelius wrote that HHS has worked for the past 19 months to analyze ways to make the program viable, but said, “The work has been groundbreaking in many ways and has taught us a great deal, much of which is captured in the attached report. But despite our best analytical efforts, I do not see a viable path forward for CLASS implementation at this time.”

She made clear her belief that the costs of long-term care to taxpayers will not go away, and said HHS will continue to work with Congress, health care providers and advocates to find new solutions to the problem.

“The fact is that we still have a long-term care problem in this country, and despite the criticism received, the CLASS program was a creative attempt to address a difficult and growing challenge for American families,” said a spokeswoman for Sen. Tom Harkin (D-IA), chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee in an interview with Congressional Quarterly.

Ranking Member of the HELP Committee, Senator Mike Enzi (R-WY) posted a statement saying, “The CLASS Act was unsustainable and fiscally unsound from the start and Secretary Sebelius made the right decision not to implement this program.” Enzi expressed frustration that the full impact of the Patient Protection and Affordable Care Act is still unknown and has many costly unintended consequences.

Other Republicans went further, pressing for repeal of the entire health care reform law. House Speaker John Boehner (R-OH) said the decision “reinforces the need for the Senate to take up the House-passed repeal of the whole law, so we can replace it with common-sense reforms that will actually lower costs.”

According to the HHS report on CLASS approximately 70 percent of older Americans will need expensive long-term care, while only 2.8 percent currently have long-term care insurance to help cover the costs. The remainder of care will be paid for through Medicaid.

### **HHS Claims Insurance Exchanges Will Be Implemented On Time**

Saying, “We’ve made investments in 2011, we’re making further investments in 2012 — in terms of IT, business process, resources that are needed to be able to bring up the exchange,” an HHS spokesman declared the federal government will have an insurance exchange program in place on January 1, 2014 as promised.

Tim Hill, deputy director of the Center for Consumer Information and Insurance Oversight at the Centers for Medicare and Medicaid Services spoke Tuesday at a health care conference sponsored by the American Bar Association.

Responding to press speculation that the administration will not be able to launch this key offering of the Patient Protection and Affordable Care Act (ACA), Hill firmly declared the

insurance exchange program will be ready. The fact that just 17 states have thus far applied for and received establishment grants has fueled speculation that the exchange program lacks sufficient structure to appeal broadly to more states across the country. Hill said the government is not dragging its feet, but rather working to create a “consumer centric, state-based exchange” that will not be a “one size fits all” program.

A lack of certainty about what the states’ exchange programs will be required to offer, the need to accommodate a variety of market demands from state to state, and unresolved legal challenges to the ACA have slowed forward progress by many states to establish exchanges.

A representative of America’s Health Insurance Plans alluded to some of the challenges fueling speculation within the industry. She said insurers must be ready to file bids to offer coverage on the exchanges by June of 2013 to accommodate open enrollment later in the year. But she said insurers do not yet know what benefits they will be required to cover, or whether the federal government will cushion insurers from losses they likely will experience when they enter an un-tried market. “We cannot stress enough that 14 months is hardly enough time to really have mapped-out and sourced-out and vendored- and contracted-out the build-it requirements of an exchange,” she said.

### **CMS Issues Final Rule on Accountable Care Rules**

The Centers for Medicare and Medicaid Services has released final Accountable Care Organization Rules that should help doctors and healthcare providers work more closely to improve the quality of care for Medicare patients.

CMS said in part, “Created by the Affordable Care Act, these final rules on Accountable Care Organizations add to the menu of options for providers looking to better coordinate care for patients and will make it easier for providers to deliver high quality care and use health care dollars more wisely.”

The two initiatives are: *The Medicare Shared Savings Program* and *The Advance Payment*. The Medicare Shared Savings Program allows providers to share in cost savings achieved through better coordinated care that results in better outcomes. The Advance Payment model provides additional financial support for providers serving rural and underserved markets for expenses like start-up costs and technology infrastructure.

“As a physician I understand the complexities of caring for a patient who may have multiple providers,” said Donald M. Berwick, M.D., administrator of the Centers for Medicare & Medicaid services (CMS). “This opportunity to coordinate care among providers could greatly improve the quality of care Medicare beneficiaries receive.”

Both the Medicare Shared Savings Program and Advance Payment model create incentives for health care providers to work together to treat an individual patient across care settings –including doctors’ offices, hospitals, and long-term care facilities.

## **RELATED NATIONAL AND INDUSTRY NEWS**

### **Industry Groups Push Super Committee to “Go Big”**

The Joint Deficit Reduction Committee is hearing from groups who see this financial crisis as an opportunity for major government reform. From a tax code over-hall to healthcare reform, and from banking regulations to EPA rules, lawmakers, lobbyists and industry specialists are writing to members of the Joint Deficit Reduction Committee pleading for understanding and urging big changes needed to overcome big economic problems.

The National Association of Manufacturers, the Business Roundtable and the U.S. Chamber of Commerce urged the super committee “to go beyond the legislative mandate of the Balanced Budget Control Act of 2011 to achieve savings of \$1.2 [trillion] to \$1.5 trillion to ensure that we stabilize our nation’s debt and put the debt’s share of the economy on a downward path.”

The American Medical Association urged medical liability reforms that would place a \$250,000 cap on non-economic damages. Another group of 20 medical groups representing more than 350,000 patients submitted a letter to the Joint Deficit Reduction Committee requesting they repeal the healthcare reform law’s provision for an Independent Payment Advisory Board. The IPAB is a committee of 15 appointees who will be required to begin recommending cuts to Medicare payments in 2014 based on targets that physicians and providers feel are too low to begin with, and that they feel will threaten seniors if doctors pull out of Medicare as a result of insufficient reimbursements. While the President says he is committed to the IPAB, members of both parties have objected to its breadth of power.

And it isn’t just lawmakers and lobbyists clamoring for repeals. A citizens group presented a group of petitions signed by approximately 1.6 million Americans requesting the repeal of the President’s signature healthcare reform law, the Patient Protection and Affordable Care Act (ACA). Republican Senators Steve Southerland (FL), Jim Demint (SC) and Steve King (IA) accepted the petitions on Wednesday, October 5<sup>th</sup>.

### **Unemployed State Workers Waiting on Congress**

States hoping to put public employees back on the job are treading water while Congress demonstrates divisions about specific portions of the President’s American Jobs Act proposal.

President Obama wants to implement the \$447 billion American Jobs Act to pay teachers, police and firefighters many of whom have been laid off in the wake of the recession. The unemployment rate is stuck at just over 9 percent, and public employees are the largest segment of American workers to lose their jobs – more than 400,000 of them since 2010. The jobs proposal also would provide funds for public infrastructure projects and would be paid for by increasing taxes on the wealthiest earners.

Despite a Congressional Budget Office report showing the President's proposal contains offsets sufficient to exceed its costs (over 10 years) by about \$3 billion, Republicans are standing firm against any kind of spending or increase in taxes. Even some Democrats have reservations about the package, which has been a source of tension between the White House and Senate Majority Leader Harry Reid (D-NV).

A measure of the dissatisfaction with the President's proposal even among the Senate's majority Democrats was reflected in recent Senate action. Democrats amended the President's plan to apply 5.6 percent surtax on those earning more than \$250,000, raising that threshold to \$1 million. They hope Republicans will be more reluctant to be seen protecting "millionaires and billionaires" in any debate on increasing revenues. The Senate voted 50-49 against limiting debate on the President's package, signaling their lack of confidence it could pass in its current form with the required 60 votes. Two Democrats, Ben Nelson of Nebraska and Jon Tester of Montana joined all Senate Republicans in defeating the request for cloture. It now appears the American Jobs Act will likely be presented and voted on in pieces.

### **Senior Citizen Advocates Oppose CPI Shift in Letter to Super Committee**

At least two seniors groups, AARP and the National Committee to Preserve Social Security and Medicare, are campaigning against any proposal to change the Consumer Price Index used to calculate cost of living increases for Social Security recipients.

Economists say the alternate inflation calculation, the chained consumer price index, would reduce government costs by slowing the growth of benefits. It also would provide smaller annual increases in benefits the current index provides. The idea was first presented by the "Gang of Six" and received bipartisan support when they recommended it to the Joint Deficit Reduction Committee.

### **Council of Institutional Investors Adds its Voice for Proxy Access**

Following a statement in September from CalPERS and others calling on the SEC to restart a rulemaking on proxy access, the Council of Institutional Investors sent a letter to the SEC requesting the "reissuance and implementation of Rule 14a-11 on proxy access and the implementation of the mandatory rulemaking provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)."

Arguing in support of the meaningful ability to place candidates for boards of directors on management's proxy card, the Council said proxy access should receive higher priority than a potential reopening of Section 13(d) reporting requirements regarding corporate ownership. The CII letter echoed the sentiments of a group of public pension funds in September.

The group of plans, representing about \$1.7 trillion in assets, expressed its support for the SEC's work, but wrote to "strongly urge the SEC to issue new rules on full proxy access

and continue its commitment to providing long-term shareowners with the right to have a say in who runs the companies they own. It's a principle whose time has come and one that will further restore accountability, integrity, and order in our financial markets.

The Council recommended that if the SEC does decide to reopen consideration of Section 13(d), how corporate ownership is reported, they might consider "the efficacy of a two-tiered reporting system that differentiates between investors seeking to establish a small minority stake and those seeking to achieve majority control, the latter group being the originally intended target of the Williams Act."

The Council of Institutional Investors represents corporate, public and union pension funds with assets exceeding \$3 trillion.

### **"Don't Shift Cost to States"- GOP Governors Resist Medicaid Spending Cuts**

In a letter to the Joint Deficit Reduction Committee, the Republican Governors' Policy Committee acknowledged that States must be flexible in finding ways to save needed billions in Medicaid funding, but cautioned against the federal government shifting more of the burden to already strapped State budgets. "Governors are opposed, however, to cost shifting as a way for the federal government to reduce Medicaid spending. Going to a new "blended rate" for [Federal Medicaid Assistance Percentage] and reducing provider fees collected by States are unfair cost-shifting measures that increase the burden to States. We are willing to do our share to save federal Medicaid dollars, but let us do it in a way that will reduce State taxpayer cost, too."

The GOP governors want to see the Super Committee achieve savings by diminishing federal regulations, and by letting States have more control over their Medicaid dollars and how they pay doctors. The group also supports repeal of a provision of the Patient Protection and Affordable Care Act that prevents States from cutting Medicaid eligibility before 2014. The letter was signed by the governors of New Jersey, Virginia, Mississippi and Indiana.

## **CALIFORNIA CONGRESSIONAL DELEGATION NEWS**

### **Senator Boxer Leary of Infrastructure Bank**

California Senator Barbara Boxer (D), Chairwoman of the Senate Environment and Public Works Committee is still wary of the \$60 billion infrastructure section of the American Jobs Act. In President Obama's plan, the majority of funds would be allocated to surface transportation improvements; but \$10 billion would be set aside to fund a national infrastructure bank.

Boxer seems disinclined to fragment transportation funding. Her committee has jurisdiction over such projects, and the new infrastructure bank – as proposed – would be housed in the Treasury, co-mingling transportation dollars with other funds. Last year she said she would "never" vote for such a proposal. She has since warmed only slightly to the idea.

“Yes, we want [an] infrastructure bank; we love it; it is great. That is not the core program. But we should build support for it, but it is not the core program,” Boxer said at a committee hearing on the issue this past summer. She instead supported strengthening the existing Transportation Infrastructure Finance and Innovation Act (TIFIA).

Boxer is one of two Democrats who have criticized this portion of the President’s jobs plan, along with Senator Michael Bennet (D-CO) who said he won’t block it, but won’t promise to support it either.

Senate Democrats have had trouble showing unity in their caucus on the President’s proposal. Senators Ben Nelson (D-Neb), Joe Lieberman (I-CT) and Mark Pryor (D-AK) voted against a \$35 billion funding package for teachers and first responders. That \$35 billion proposal failed to win approval in a 50-50 vote.

### **House Passes Herger Bill Repealing 3 Percent Withholding Rule, Approves Medicaid Eligibility Adjustment**

The House of Representatives passed a component of President Obama’s American Jobs Act, now being re-packaged and debated in pieces. The bill, which was offered by Ways and Means Committee member Wally Herger (R-CA), passed 405-16.

The withholding rule required state and local governments to withhold three percent of payments to all government contractors to help guarantee income tax collection. It was widely agreed to be an unnecessary burden to government purchasers and contractors. Democrats identified it as an unnecessary regulatory burden that crimps cash flow. Republicans touted its repeal as a “jobs measure”. Repeal of the withholding provision has been a priority of the National Council on Teacher Retirement (NCTR), the National Association of State Retirement Administrators (NASRA), and a broad range of other governmental advocates.

The House also passed legislation that will rewrite an income formula used to determine Medicaid eligibility for consumers purchasing health insurance through the new State-run health insurance exchanges that will begin operating in 2014. The bill was passed to offset the revenue lost due to the repeal of the three-percent withholding tax. The CBO estimated that erasing the three percent holding tax provision will cost \$11 billion over ten years in spending cuts or tax hikes in order to prevent any impact to the federal government’s deficit.

Senate Minority Leader Mitch McConnell (R-KY) greeted the news of the House passage warmly, saying, “The overwhelming, bipartisan vote in the House on the 3 percent withholding provision shows that when Congress acts on areas of agreement — rather than stimulus spending and tax hikes — we can get things done.”